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SUBJECT: HUMAN RIGHTS ACTIVIST BINAYAK SEN RELEASED ON BAIL

REF: A. 08 MUMBAI 136, 240  
[1](#)B. 08 NEW DELHI 641

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[1](#)1. (U) Summary: Human rights activist Dr. Binayak Sen was released on bail from a Chhattisgarh jail on May 26 after two years of imprisonment on charges of abetting the state's Maoist insurgency. His release was ordered by the Indian Supreme Court on May 25, after a long legal battle. A longtime critic of Chhattisgarh's violent anti-insurgency efforts, Sen had been arrested under strong anti-terrorism laws, which allowed those arrested to be held without bail. Sen's case had attracted the attention of foreign and domestic human rights activists, who had criticized his arrest, the slow pace of the trial, and the refusal of the Chhattisgarh government to grant him bail. Civil rights observers noted that the Supreme Court's order after a very brief hearing may reflect impatience with the slow judicial process in Chhattisgarh. With the start of his trial and his release on bail, Sen has fared better than many others who continue to languish in jails in Western and Central India awaiting trial under state or federal anti-terrorism laws. End Summary.

Free on Bail

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[1](#)2. (U) On May 25, the Indian Supreme Court ordered the Chhattisgarh government to grant bail to civil rights activist Dr. Binayak Sen in a very brief oral hearing. The decision was a dramatic turn of events for Sen, who was arrested May 14, 2007, and charged with "waging war against the state" and "assisting a banned organization" under the Indian Penal Code's Unlawful Activities (Prevention) Act of 1967 and the Chhattisgarh Public Security Act, 2005. (Note: In India, public safety is a state responsibility, and individual states can enact internal security laws. End note.) The Public Security Act allows suspects to be held without bail. Sen is alleged to have couriered letters from a Maoist prisoner to others and to have aided the Maoist movement (see reftels). This was Sen's second appeal to the Supreme Court for bail, which reversed a December 2008 decision of the Chhattisgarh High Court. In a brief 40-second hearing on Sen's appeal, the court summarily granted the request without issuing a rationale, according to Rajendra Sail, the People's Union for Civil Liberties (PUCL) President for Chhattisgarh and a retired attorney. Sen was then released on May 26, once the order had been received in Raipur, Chhattisgarh's capital. (Note: Renowned for his work as a physician who brought health care to the rural poor in India, Sen is also the Vice-President of the Chhattisgarh PUCL. End Note.)

¶3. (U) As he left the jail in Raipur, Sen told reporters that he had never been a Naxalite sympathizer. (Note: Naxalite is another name for Maoist insurgents in India who frequently resort to violence. End Note.) He said he condemns all violence - violence by the Naxalites, the state, and the militia armed by the state of Chhattisgarh to fight the Naxalites, known as the Salwa Judum. Sen said he would pursue the fight against deplorable prison conditions. He also told reporters that he fears a threat to his life by the state government. (Comment: Whether such fear is well-founded is unknown, but Indian police have been known to arrange "encounters" in which persons considered criminals are killed. End Comment.)

#### Sen's Bail History

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¶4. (U) Since his arrest in 2007, Sen repeatedly sought bail but had been denied based upon the Chhattisgarh Public Securities Act which denies bail for suspected terrorists or those who support terrorism. (Note: Bail can be granted under the central government's Unlawful Activities Prevention Act. End note.) His most recent bail plea included a request that he be released on medical grounds. Doctors in Chhattisgarh determined that Sen required cardiac surgery, but the State refused to grant his request for out-of-state care, contending that adequate care was available in Chhattisgarh. Sen's wife Ilina told Congenoff that her husband feared police interference with medical care afforded to him in Chhattisgarh.

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¶5. (U) The Supreme Court, however, did not base its decision on Sen's medical condition, according to Sail. Sail noted that Sen's unconditional release upon the furnishing of a personal bond is a remedy generally reserved only for highly-respected people. Sen's work as a human rights advocate for the Chhattisgarh's tribal people has earned him international acclaim. He was honored with the Jonathan Mann Award for Global Health and Human Rights in 2008.

#### Other Prisoners Not So Lucky

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¶6. (U) Though Sen has been the most prominent person held under the anti-terrorism laws of late, many others in Western and Central India remain incarcerated for more than two years without trial. The Chhattisgarh PUCL reports that 178 people have been detained under the state's anti-terrorism laws as alleged Maoists in that state, including businessmen, a tailor, journalists, NGO workers, and farmers. In Maharashtra, several high-profile arrests from 2007 under the federal Prevention of Terrorism Act (POTA) and the Maharashtra Control of Organized Crime Act (MCOCA) have yet to yield trials: Vernon Gonsalves, Shreedhar Srinivasan, and Arun Ferreira were arrested in Mumbai in 2007, allegedly as senior members of the state Maoist committee, but specific charges have yet to be framed, a necessary precursor to commencement of any trial. Gonsalves' wife, attorney Susan Abraham, said she will use the Supreme Court's decision in Sen's case to seek bail for her husband.

17. (U) In Gujarat, 79 Muslims remain incarcerated under POTA, awaiting trial since their arrests in 2002 for involvement in the Godhra train fire that killed 59 Hindu activists, despite a ruling by the Gujarat High Court in February 2009 that the train fire did not constitute an act of terrorism. The State's appeal of the High Court's order is pending in the Supreme Court.

#### Sen's Trial Continues

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18. (U) Chhattisgarh Chief Minister Dr. Raman Singh told reporters that Sen's trial would continue despite the issuance of bail. Sen's trial has proceeded slowly, with a few days of trial followed by lengthy adjournments, a common pattern in the Indian judicial system. Prosecutors informed the Supreme Court the trial would likely conclude within three months, according to Sail.

19. (U) Comment. The Supreme Court order granting Sen bail likely reflects impatience with a judicial process that has dragged on for over two years. However, others charged under various state and federal anti-terrorism laws sitting in jails in Chhattisgarh, Maharashtra, and Gujarat have yet to have dates set for their trials, or, in some cases, have charges filed against them. The mechanism for providing expedited trials in high profile cases, -- like that currently used in the trial of Ajmal Kasab, the lone surviving gunman from the November 2008 terrorist attacks on Mumbai -- has not been used to try those charged as Maoist co-conspirators or those charged with the Godhra train fire, indicating that the states want to avoid a public trial in these cases. However, delayed trials are the norm in India; the Indian judicial system is extremely slow, with few judges, limited court resources, and over-burdened case dockets and backlogs. These problems continue to afflict those in the justice system, regardless of the charges against them, which is not likely to improve soon. End comment.  
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